

AMENDED IN SENATE APRIL 6, 2006

**SENATE BILL**

**No. 1560**

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**Introduced by Senator Battin**

February 23, 2006

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An act to amend Section 1363.03 of the Civil Code, relating to common interest developments, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1560, as amended, Battin. Common interest developments: governance.

The Davis-Stirling Common Interest Development Act governs the establishment and management of common interest developments. These provisions require that a common interest development be managed by an association and that elections related to the governance or administration of the common interest development conform to specified requirements. Existing law authorizes a member of an association to bring a civil action to enforce his or her rights and authorizes a court to impose a civil penalty of up to \$500 for a violation of the provisions governing elections.

This bill would revise provisions governing the conduct of elections in a common interest development. Among other things, the bill would *provide immunity for the association and its directors, officers, and agents for the content of communications by candidates or members advocating a point of view in those elections*, require an association to adopt rules to allow one or more inspectors to appoint or oversee ~~additional persons~~ *independent 3rd parties* to count and tabulate votes, specify that a quorum shall only be required if so stated in the ~~bylaws~~ *governing documents of the association or other*

~~provision of law, prohibit an association from requiring a membership meeting in regard to an election except for the election or removal of directors authorize a secret ballot to be distributed and voted upon by the membership without a meeting, and impose other requirements relating to proxies and secret ballots, as specified.~~

The bill would declare that it is to take effect immediately as an urgency statute, *but its provisions would become operative on July 1, 2006.*

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1363.03 of the Civil Code is amended  
2 to read:  
3 1363.03. (a) An association shall adopt rules, in accordance  
4 with the procedures prescribed by Article 4 (commencing with  
5 Section 1357.100) of Chapter 2, that do all of the following:  
6 (1) Ensure that if any candidate or member advocating a point  
7 of view is provided access to association media, newsletters, or  
8 Internet Web sites during a campaign, for purposes that are  
9 reasonably related to that election, equal access shall be provided  
10 to all candidates and members advocating a point of view,  
11 including those not endorsed by the board, for purposes that are  
12 reasonably related to the election. The association shall not edit  
13 or redact any content from these communications, but may  
14 include a statement specifying that the candidate or member, and  
15 not the association, is responsible for that content. *The*  
16 *association and its directors, officers, and agents, shall be*  
17 *immune from liability for the content of those communications.*  
18 (2) Ensure access to the common area meeting space, if any  
19 exists, during a campaign, at no cost, to all candidates, including  
20 those who are not incumbents, and to all members advocating a  
21 point of view, including those not endorsed by the board, for  
22 purposes reasonably related to the election.  
23 (3) Specify the qualifications for candidates for the board of  
24 directors and any other elected position, and procedures for the  
25 nomination of candidates, *consistent with the governing*  
26 *documents.* A nomination or election procedure shall not be  
27 deemed reasonable if it disallows any member of the association

1 from nominating himself or herself for election to the board of  
2 directors.

3 (4) Specify the qualifications for voting, the voting power of  
4 each membership, the authenticity, validity, and effect of proxies,  
5 and the voting period for elections, ~~including the times at which~~  
6 ~~polls will open and close.~~ *consistent with the governing*  
7 *documents.*

8 (5) Specify a method of selecting one or three independent  
9 third parties as inspector, or inspectors, of election utilizing one  
10 of the following methods:

11 (A) Appointment of the inspector or inspectors by the board.

12 (B) Election of the inspector or inspectors by the members of  
13 the association.

14 (C) Any other method for selecting the inspector or inspectors.

15 (6) Allow the inspector, or inspectors, to appoint and oversee  
16 additional persons to count and tabulate votes as the inspector or  
17 inspectors deem appropriate, *provided that the persons are*  
18 *independent third parties.*

19 (b) Notwithstanding any other law or provision of the  
20 governing documents, all items legally requiring a vote of the  
21 membership, including but not limited to, ~~an election within a~~  
22 ~~common interest development regarding~~ assessments, selection  
23 and removal of members of the association board of directors,  
24 amendments to the governing documents, or the grant of  
25 exclusive use of common area property pursuant to Section  
26 1363.07 shall be held by secret ballot in accordance with the  
27 procedures set forth in this section. A quorum shall be required  
28 ~~only if so stated in the bylaws of the association. A secret ballot~~  
29 ~~as described in this section shall not be interpreted to be a written~~  
30 ~~ballot as described in Section 7513 of the Corporations Code.~~  
31 *only if so stated in the governing documents of the association or*  
32 *other provisions of law. An association shall allow for*  
33 *cumulative voting using the secret ballot procedures provided in*  
34 *this section, if cumulative voting is provided for in the governing*  
35 *documents.*

36 (c) (1) The association shall select an independent third party  
37 or parties as an inspector of election. The number of inspectors of  
38 election shall be one or three.

39 (2) For the purposes of this section, an independent third party  
40 includes, but is not limited to, a volunteer poll worker with the

1 county registrar of voters, a licensee of the California Board of  
2 Accountancy, or a notary public. An independent third party may  
3 be a member of the association, but may not be a member of the  
4 board of directors or a candidate for the board of directors or  
5 related to a member of the board of directors or a candidate for  
6 the board of directors. An independent third party may not be a  
7 person who is currently employed or under contract to the  
8 association for any compensable services unless expressly  
9 authorized by rules of the association adopted pursuant to  
10 paragraph (5) of subdivision (a).

11 (3) The inspector or inspectors of election shall do all of the  
12 following:

13 (A) Determine the number of memberships entitled to vote  
14 and the voting power of each.

15 (B) Determine the authenticity, validity, and effect of proxies,  
16 if any.

17 (C) Receive ballots.

18 (D) Hear and determine all challenges and questions in any  
19 way arising out of or in connection with the right to vote.

20 (E) Count and tabulate all votes.

21 (F) Determine when the polls shall close.

22 (G) Determine the result of the election.

23 (H) Perform any acts as may be proper to conduct the election  
24 with fairness to all members in accordance with this section, *the*  
25 *Corporations Code*, and all applicable rules of the association  
26 regarding the conduct of the election that are not in conflict with  
27 this section.

28 (4) An inspector of election shall perform his or her duties  
29 impartially, in good faith, to the best of his or her ability, and as  
30 expeditiously as is practical. If there are three inspectors of  
31 election, the decision or act of a majority shall be effective in all  
32 respects as the decision or act of all. Any report made by the  
33 inspector or inspectors of election is prima facie evidence of the  
34 facts stated in the report.

35 (d) (1) Proxies as described in Section 7613 of the  
36 *Corporations Code* shall not be interpreted to be a ~~secret~~ ballot as  
37 described in this section. An association may continue to use and  
38 to accept proxies if permitted or required by the bylaws of the  
39 association and if those proxies meet the requirements of this  
40 article, other laws, and the association's governing documents,

but the association shall not be required to prepare or distribute proxies pursuant to this section. A proxy shall not be used in lieu of a ballot at a meeting.

(2) Any instruction given in a proxy issued for an election that directs the manner in which the proxy holder is to cast the vote shall be set forth on a separate page of the proxy that can be detached and given to the proxy holder to retain. The proxy holder shall cast the member's vote by secret ballot, *unless the proxy is revoked by the member prior to the receipt of the ballot by the inspector of elections or his or her designee.*

(e) Ballots and two preaddressed envelopes with instructions on how to return ballots shall be mailed by first-class mail or delivered by the association to every member not less than 30 days prior to the deadline for voting. In order to preserve confidentiality, a voter may not be identified by name, address, or lot, parcel, or unit number on the ballot. The association shall use as a model those procedures used by California counties for ensuring confidentiality of voter absentee ballots, including all of the following:

(1) The ballot itself is not signed by the voter, but is inserted into an envelope that is sealed. This envelope is inserted into a second envelope that is sealed. In the upper left hand corner of the second envelope, the voter ~~prints and signs his or her name, address, and lot, or parcel, or unit number that entitles him or her~~ *shall sign his or her name, indicate his or her name, and indicate the address or separate interest identifier that entitles him or her* to vote.

(2) The second envelope is addressed to the inspector or inspectors of election, who will be tallying the votes. The envelope may be mailed or delivered by hand to a location specified by the inspector or inspectors of election. The member may request a receipt for delivery.

(f) All votes shall be counted and tabulated by the inspector or inspectors of election in public at a properly noticed open meeting of the board of directors or members. Any candidate or other member of the association may witness the counting and tabulation of the votes. No person, including a member of the association or an employee of the management company, shall open or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated. *The inspector of*

1 *election, or his or her designee, may verify the member's*  
2 *information and signature on the outer envelope prior to the*  
3 *election. Once a secret ballot is*east received by the inspector of*  
4 *elections or his or her designee, it shall be irrevocable.**

5 (g) The results of the election shall be promptly reported to the  
6 board of directors of the association and shall be recorded in the  
7 minutes of the next meeting of the board of directors and shall be  
8 available for review by members of the association. Within 15  
9 days of the election, the board shall publicize the results of the  
10 election in a communication directed to all members.

11 (h) The sealed ballots at all times shall be in the custody of the  
12 inspector or inspectors of election or at a location designated by  
13 the inspector or inspectors until after the tabulation of the vote, at  
14 which time custody shall be transferred to the association.

15 ~~(i) Cumulative voting rights and nomination of candidates~~  
16 ~~from the floor of membership meetings or nomination by any~~  
17 ~~other manner required by the association's governing documents~~  
18 ~~shall not be affected by this section.~~

19 *(i) Notwithstanding any other provision of law, the*  
20 *association's governing documents may provide for the*  
21 *nomination of candidates from the floor of membership meetings*  
22 *or nomination by any other manner.*

23 (j) After tabulation, election ballots shall be stored by the  
24 association in a secure place for no less than one year after the  
25 date of the election. In the event of a recount or other challenge  
26 to the election process, the association shall, upon written  
27 request, make the ballots available for inspection and review by  
28 association members or their authorized representatives. Any  
29 recount shall be conducted in a manner that shall preserve the  
30 confidentiality of the vote.

31 ~~(k) Except for the election or removal of directors, a~~  
32 ~~membership meeting shall not be required unless required by the~~  
33 ~~governing documents of the association.~~

34 *(k) Except as provided in subdivision (f) and in the governing*  
35 *documents, a secret ballot may be distributed and voted upon by*  
36 *the membership without a meeting.*

37 (l) The provisions of this section apply to both incorporated  
38 and unincorporated associations, notwithstanding any contrary  
39 provision of the governing documents.

1     ~~(m) The procedures set forth in this section shall apply only to~~  
2     ~~votes cast directly by the membership, and shall not apply to any~~  
3     ~~meeting where the governing documents call for votes to be cast~~  
4     ~~or carried by delegates or other elected representatives.~~

5     *(m) The procedures set forth in this section shall apply to*  
6     *votes cast directly by the membership, but do not apply to votes*  
7     *cast by delegates or other elected representatives.*

8     *(n) In the event of a conflict between this section and the*  
9     *provisions of the Nonprofit Mutual Benefit Corporation Law*  
10    *(Part 3 (commencing with Section 7110) of Division 2 of Title 1*  
11    *of the Corporations Code) relating to elections, the provisions of*  
12    *this section shall prevail.*

13    *(o) The amendments made to this section by the act adding*  
14    *this subdivision shall become operative on July 1, 2006.*

15    SEC. 2. This act is an urgency statute necessary for the  
16    immediate preservation of the public peace, health, or safety  
17    within the meaning of Article IV of the Constitution and shall go  
18    into immediate effect. The facts constituting the necessity are:

19    In order to ensure that these changes apply to ~~election~~ *elections*  
20    conducted by common interest developments as soon as possible,  
21    it is necessary that this act take effect immediately.